

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
)	CC Docket No. 02-6
Request for Waiver of Commission Rules)	
by)	
)	File No. FCC Form 471 Application
Clifton Public Library System)	Number 161061588
)	
Schools and Libraries Universal Service)	
Support Mechanism)	
)	

To: Federal Communications Commission

**CLIFTON PUBLIC LIBRARY SYSTEM
REQUEST FOR WAIVER**

Pursuant to Section 54.719(c) of the Federal Communications Commission’s (“FCC”) rules, the Clifton Public Library System (“CPLS”)¹ respectfully submits this request for waiver of Commission rules. CPLS filed its funding year 2016 FCC Form 471 (“Form 471”) late but within 14 days after the filing window deadline. Based on confirmation messages received in USAC’s E-rate Productivity Center (“EPC”) system, CPLS believed it had successfully filed the form and that USAC would accept and review the application. CPLS was later informed that USAC would not consider its application for funding absent a waiver of the filing window deadline. But when CPLS discovered the issue and filed the waiver request with the Commission, the 60-day deadline to file an appeal had passed. The Commission denied CPLS’s waiver request on the grounds that it failed to submit the request within 60 days of an EPC news feed message notifying CPLS that its application would not be considered for funding. CPLS never saw the notification triggering the appeal deadline.

¹ Billed Entity Number 122658.

After CPLS requested and was denied relief, the Commission issued the *Pribilof School District Order*.² Pursuant to the FCC’s directive in the *Pribilof Order*, the Wireline Competition Bureau (“WCB”), through the Schools and Libraries Division, notified CPLS and similarly situated applicants that they may be eligible for relief under the FCC’s order. CPLS submits this request for waiver because CPLS meets the standard for waiver established by the Commission in the *Pribilof Order*. The facts and circumstances in this case are sufficiently similar to those in *Pribilof*, and CPLS meets the Commission’s criteria for filing an application beyond the close of the filing window deadline. A waiver of Commission rules is also appropriate given the special circumstances of this case, and because the requested relief would advance the public interest.

Accordingly, CPLS respectfully requests that the Commission (1) waive the FCC Form 471 application filing window deadline and (2) waive the 60-day appeal deadline in Section 54.720 of its rules. Given the facts and circumstances in this case and prior Commission precedent, including its recent *Pribilof School District Order*, there are ample grounds to grant the requested relief.

I. BACKGROUND

A. Submission of the FCC Form 471 and Request for Waiver.

CPLS is a small public library system that serves 23,034 library patrons in the Clifton, New Jersey area. CPLS has applied for E-rate funding only twice, in 2016 and then again in 2017. When CPLS has filed for E-rate discounts, it has done so using an 80% discount rate. CPLS has no one on staff with E-rate experience. Nor does it have designated staff to carry out E-rate related responsibilities.

CPLS submitted and certified its funding year 2016 FCC Form 471 on August 4, 2016, exactly fourteen days after the close of the July 21, 2016 filing window for libraries and consortia.³ The application included a single funding request for wireless access points and required licenses. The total funding commitment request amounted to \$3,631.74.

² *Application for Review of a Decision of the Wireline Competition Bureau by Pribilof School District, Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, FCC 18-118 (rel. Aug. 8, 2018) (“*Pribilof School District Order*”).

³ FCC Form 471 Application Number 161061588.

The delay in filing was due in part to CPLS's inexperience with the E-rate program. Funding year 2016 was the first year CPLS applied for E-rate discounts. It was also the first year E-rate applicants were required to use the EPC portal. Issues related to the implementation of EPC, together with CPLS's unfamiliarity with the portal, further contributed to its delayed filing. CPLS discovered just before the filing window deadline that its EPC account was not correctly set up with the correct authorized user, leaving it with limited accessibility to EPC and temporarily unable to file its application.

CPLS ultimately submitted the application 14 days after the applicable deadline. Upon submitting the Form 471, CPLS received a message in EPC confirming that it had successfully filed the form. CPLS was also notified that any funding commitments would be prioritized after timely submitted applications. Because CPLS was permitted to file the form, and based on the confirmation message, it believed the application had been successfully submitted. It thereafter awaited a funding commitment decision from USAC, either approving or denying the funding request.

In October 2016, the New Jersey State Library System's E-rate consultant discovered that CPLS had filed the application after the original filing window deadline. At this point, CPLS had received neither a funding commitment decision nor any similar notification regarding the status of its application. And it was not aware that a waiver of Commission rules would be required to ensure that USAC would accept and review the Form 471 for funding.

Upon learning CPLS had missed the filing window deadline, on October 20, 2016, the E-rate consultant filed a waiver request on behalf of CPLS.⁴ Because the application was late but within 14 days after the close of the deadline, it requested that the Commission waive the filing window deadline. The Commission denied CPLS's request in a February 27, 2017 public notice.⁵ CPLS's request for waiver was identified as an "Untimely Filed Request[] for Review."⁶

⁴ *Clifton Public Library System Request for Waiver*, CC Docket 02-6 (filed October 20, 2016). A copy of the request for waiver is attached as Exhibit A.

⁵ *Streamlined Resolution of Requests Related to Actions by the Universal Service Administrative Company*, CC Docket No. 02-6, Public Notice DA 17-198 at 6 (WCB, rel Feb. 27, 2017).

⁶ *Id.* at 6.

CPLS never received notification regarding the status of its application. As a result, it was not immediately clear when the 60-day appeal deadline began or what triggered the deadline. After the waiver request was filed and denied, it learned that it likely received an EPC news feed notification informing it that the application would not be considered for funding. CPLS never saw the EPC news feed notification triggering the deadline.

B. The *Pribilof School District Order*.

On August 8, 2018, the Commission issued and released the *Pribilof School District Order*.⁷ After encountering a series of errors associated with EPC, the Pribilof School District (“Pribilof”) filed its Form 471 four days after the close of the filing window deadline. Pribilof received an EPC generated message confirming receipt of the application and informing it that any funding commitments would be prioritized after timely submitted applications. In light of these messages, Pribilof believed its Form 471 had been accepted and that it would eventually receive a funding commitment decision. One day later, however, a message in EPC’s news feed displayed a message that Pribilof’s application would not be considered for funding. Pribilof was unaware that it could check the news feed for application-specific information and did not see the message.

Nearly four months later, after consulting with its state E-rate coordinator, Pribilof filed a request with the Commission seeking a waiver of the Form 471 filing deadline. The waiver request was denied on the basis that it was filed more than 60 days after the date of the EPC news feed notification. Pribilof subsequently filed a petition for reconsideration which was dismissed. On review, in the *Pribilof School District Order*, the Commission granted relief to Pribilof, waiving both the 60-day appeal deadline and the Form 471 filing deadline.

In the *Pribilof Order*, the Commission addressed the challenges that applicants faced in funding year 2016. It noted that, due to unexpected issues with the rollout of EPC, USAC extended the filing window and, for the first time, created a second filing window for libraries and consortia.⁸ The

⁷ *Pribilof School District Order*, *supra*.

⁸ *Id.* at para. 3.

Commission also addressed the conflicting messages generated by the EPC system, which informed applicants that late-filed Forms 471 were “successfully filed” and would be prioritized after timely submitted applications. The Commission noted that the communications were “factually inaccurate and at odds with the Commission’s E-rate program rules for funding year 2016, which provided that out-of-window applications would not be considered for funding at all.”⁹ It acknowledged that USAC did later notify applicants via the EPC news feed that late-filed Forms 471 would not be considered for funding. But the Commission found that, under the circumstances in *Pribilof*, the applicant had no reason to expect that the EPC news feed would have information regarding the status of its application.¹⁰ In fact, as the Commission noted, it had received a notification from USAC just one day earlier stating that the application had been successfully filed.¹¹

The Commission found that a waiver of the appeal deadline was warranted. It found that Pribilof understandably treated the EPC notification as legitimate, declined to fault Pribilof for relying on what appeared to be a formal acceptance notification, and found that it had no reason to expect that EPC would contain conflicting information regarding the status of its application. A combination of these factors, according to the Commission, constituted special circumstances unique to the funding year 2016 application process.¹² Additionally, it found that granting a waiver of the appeal deadline would not harm the public interest. “The difficulties with the implementation of EPC during the funding year 2016 application process were not within the control of Pribilof, and granting waiver relief prevents an outcome whereby Pribilof is foreclosed from seeking to obtain E-rate much-needed E-rate funding.”¹³

⁹ *Id.* at para. 9.

¹⁰ *Id.* at para. 10.

¹¹ *Id.* at para. 10.

¹² *Id.* at para. 11.

¹³ *Id.* at para. 11.

The Commission also determined that Pribilof filed its application only four days outside the close of the applicable funding year 2016 window.¹⁴ Consistent with precedent regarding late-filed applications, the Commission granted a waiver of the Form 471 application submission deadline.¹⁵

Finally, the Commission recognized that there may be similarly situated applicants and found that such applicants should be extended the same relief:

. . . [W]e recognize the possibility that there may be other applicants that filed out-of-window FCC Form 471 applications in funding year 2016, received acceptance notices through EPC from USAC incorrectly indicating that their applications could be funded, and filed waiver requests with the Commission beyond 60 days from the date of USAC’s decisions regarding their funding year 2016 FCC Form 471 applications because they believed and relied on the factually incorrect USAC notifications. To the extent this is the case, we find that applicants similarly situated to Pribilof should be afforded the same relief.¹⁶

The Commission directed the Wireline Competition Bureau to initiate a process by which other applicants would have 60 days to demonstrate that they experienced similar circumstances and that a waiver would be in the public interest. The Bureau was further instructed to identify late-filed waiver requests from funding year 2016 and grant waivers in situations “where (1) petitioners demonstrated that their requests for waiver of the deadline to appeal a USAC decision were late-filed because of the same EPC notice issue faced by Pribilof; and (2) meet Commission-established waiver criteria for filing applications beyond the close of the applicable filing window (e.g., within 14 days after the window closes).”¹⁷

C. Notice for Potential Relief Under the *Pribilof School District Order*.

In June 2019, CPLS received a notice from the Schools and Libraries Division, dated June 11, 2019, with the heading “Potential Eligibility for Funding Year 2016 Out-of-Window Relief.”¹⁸ The notice explained that CPLS was eligible for relief under the *Pribilof School District Order* because it met the Commission’s established criteria. It specified that CPLS would need to demonstrate that its situation was

¹⁴ *Id.* at para. 12.

¹⁵ *Id.* at para. 12.

¹⁶ *Id.* at para. 13.

¹⁷ *Id.* at para. 13.

¹⁸ Notice of Potential Eligibility for Funding Year 2016 Out-of-Window Waiver Relief. The notice, dated June 11, 2019, is attached as Exhibit B.

similar to that of Pribilof and that acceptance of CPLS's late-filed funding year 2016 application would be in the public interest, thereby warranting a waiver of the application filing deadline. The notice also stated that a waiver request must be filed within 60 days from the date of the letter.

II. DISCUSSION

A. CPLS Meets the Criteria Established by the FCC in the *Pribilof School District Order* to Warrant a Waiver of Commission Rules.

The Commission should waive both the filing window deadline and 60-day appeal deadline because CPLS meets the criteria established in *Pribilof* to warrant a waiver of Commission rules. The facts and circumstances in this case are sufficiently similar to those in *Pribilof*, and CPLS meets the Commission's waiver criteria for filing an application beyond the close of the applicable filing window deadline.

The similarities between this case and those in the *Pribilof Order* are difficult to ignore. CPLS, like Pribilof, filed its application late but within 14 days after the applicable filing window deadline. Upon filing the Form 471, CPLS received the same EPC generated message confirming that it had successfully filed the form but that any funding commitments would be prioritized after timely submitted applications. Both Pribilof and CPLS relied on erroneous EPC messages and believed they had successfully filed their Forms 471. Neither saw the EPC news feed messages stating that the applications would not be considered for funding. In both cases, the waiver requests were filed after the 60-day appeal deadline because Pribilof and CPLS did not see the EPC message. Finally, it is important to note that, like Pribilof, CPLS's initial request for waiver was filed within 60 days after discovering that application would not be considered for funding.

CPLS also meets the Commission's waiver criteria for filing applications beyond the close of the filing window deadline. The Commission has routinely waived its rules for applicants filing their Forms 471 after the USAC-established deadline. In the *Acorn Public Library District Order*, for example, the Commission granted waivers to applicants that filed their Forms 471 late but within 14 days after the

filing window deadline.¹⁹ The Commission found that such a violation was procedural rather than substantive in nature, and therefore, a complete rejection of the applications was not warranted. The Commission noted that applications filed within 14 days were filed close enough to the deadline so as not to impair the administration of the E-rate program. The Commission also found that, in the absence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements, rigid adherence to filing procedures would not serve the public interest. More recently, in the *Academy of Math and Science Order*, the Commission reiterated that the filing of the Form 471 late but within two weeks after the deadline constituted special circumstances justifying a waiver.²⁰

CPLS filed its application exactly 14 days after the applicable filing window deadline. The well-documented issues with EPC contributed to the delay, as did CPLS's inexperience with the E-rate program, generally, and the EPC system, more specifically. As CPLS explained in its initial waiver request, it discovered just before the filing window deadline that its EPC account was not correctly set up with the correct authorized user. It was therefore left with limited access to EPC and temporarily unable to file Form 471. Upon resolving its EPC issues, CPLS filed the application late but still within 14 days of the deadline.

Because the facts in this case are nearly identical to those in *Pribilof*, and because CPLS meets the standard for waiver of the filing window deadline, a waiver of Commission rules is warranted.

B. A Waiver of Commission Rules Would Advance the Public Interest and Is Appropriate Given the Special Circumstances of This Case.

Waiver of the Commission's rules is appropriate if (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest.²¹ Given the facts and

¹⁹ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Acorn Public Library District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-637819, *et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 15474 (Wireline Comp. Bur. 2008).

²⁰ *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Academy of Math and Science et al.; Schools and Libraries Universal Service Support Mechanism*, CC Docket No. 02-6, Order, 25 FCC Rcd 9256 (2010).

²¹ Generally, the Commission's rules may be waived if good cause is shown. 47 CFR § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

circumstances of this case, a waiver of both the Form 471 filing window deadline and 60-day appeal deadline is appropriate. In the *Pribilof Order*, the Commission addressed the unique challenges that applicants faced in funding year 2016 and acknowledged the serious issues with EPC. Problems with the implementation of EPC had such an impact that USAC took the extraordinary step of not only extending the filing window but creating a second filing window deadline. The combination of factors in this case – inaccurate EPC messages, lack of formal notice regarding the status of the application, CPLS’s inexperience with the E-rate program, and well-documented issues with EPC – as in *Pribilof*, constitutes special circumstances to warrant the requested waiver of Commission rules.

A waiver in this case would also advance the public interest. As the Commission determined in *Pribilof*, the difficulties with the implementation of EPC during the funding year 2016 application process were not within the control of applicants. Granting the requested relief would prevent an outcome whereby CPLS is foreclosed from seeking to obtain much-needed E-rate funding.

Finally, this is not a case of waste, fraud or abuse. Nor is it a willful violation of the Commission’s rules. Rather, this is a case in which a library that had never before participated in the E-rate program sought to apply for program discounts, despite its limited administrative resources and lack of experience. The circumstances arise from a series of unfortunate errors on its part, coupled with the issues presented by the implementation of EPC, all during a funding year that confronted applicants with new and unfamiliar challenges.

III. RELIEF SOUGHT

For the foregoing reasons, CPLS respectfully requests that the Commission (1) waive the FCC Form 471 application filing window and (2) waive the 60-day appeal filing window deadline in Section 54.720 of the Commission’s rules.

Respectfully submitted,

Sydel Cohen
Management Specialist

Clifton Public Library
292 Piaget Avenue
Clifton, NJ 07011
973-772-5500 Ext. 3004
cohen@cliftonpl.org

July 29, 2019

Exhibit A

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

Request for Waiver of Form 471)	Form 471 Number 161061588
Clifton Public Library System)	
Billed Entity Number 122658)	
)	CC Docket No. 02-6
Schools and Libraries)	
Universal Service Support Mechanism)	
)	

REQUEST FOR WAIVER

TO: Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, D.C. 20554

In accordance with Sections 54.719 through 54.721 of the Commission's Rules, Metro Catholic Stephen Building through its consultant requests that the Federal Communications Commission ("FCC", "Commission") waive the deadline for submission of Funding Year 2016 form 471 Discounted Services Application. Consistent with precedent in *Academy of Math and Science*¹, we ask the Commission to waive the filing deadline for the application below:

Clifton Public Library System
Billed Entity Number: 122658
FCC Registration Number: 0012027694
Form 471 Number: 161061588

The application herein requesting the deadline waiver was filed on August 4th, 2016. This application was filed within the 14-day period following the close of the filing window. The

¹ *Academy of Math and Science, FCC 10-122, Rel July 8, 2010 at para 4.*

Commission has established precedent waiving the Form 471 deadline² for applications that were filed shortly after the filing window closed. The library's E-Rate Productivity Center (EPC) account was not correctly set up; the school contacted E-Rate Central to assist account set-up and the application completion.

Thank you for your consideration.



Shaneka Bratton, Consultant
E-Rate Central

400 Post Avenue, Suite, 410
Westbury, NY 11590
Office: (516) 801-7806
Fax: (516) 801-7816
sbratton@e-ratecentral.com

² *Requests for Review of the Decisions of the Universal Service Administrator by Anderson Elementary School, et al., Schools and Libraries Universal Service Support Mechanism, File Nos. SLD-789495, et al., CC Docket No. 02-6, Order, 27 FCC Rcd 5319, 5319-20, para. 2*

Exhibit B



Universal Service
Administrative Co.

Schools and Libraries

Potential Eligibility for Funding Year 2016 Out-of-Window Waiver Relief – TIME-SENSITIVE & ACTION REQUIRED WITHIN 60 DAYS OF THIS NOTICE

June 11, 2019

Sydel Cohen
292 Piaget Ave
Clifton, NJ 07011
cohen@cliftonpl.org

Re: Applicant name: Clifton Public Library System
Billed Entity Number: 122658
FCC Form 471 Number: 161061588

Dear Funding Year 2016 E-Rate Applicant,

You are receiving this letter because you may be eligible for relief under the Federal Communications Commission's (FCC) *Pribilof School District Order*, which was released on August 8, 2018. To be eligible for relief, you must demonstrate that your situation was similar to that of the Pribilof School District and that acceptance of your late-filed funding year (FY) 2016 FCC Form 471 application would be in the public interest, thereby warranting a waiver of the application filing deadline.

In the *Pribilof School District Order*, the FCC granted a waiver to the Pribilof School District after determining that the school district's waiver request met the FCC's established waiver criteria. The FCC found that although the Pribilof School District filed its FY 2016 FCC Form 471 application beyond the close of the filing window (i.e., within 14 days after the window closed) and did not timely file a waiver request with the FCC, the Pribilof School District was unaware that its application had been rejected as a result of platform failures of the Universal Services Administrative Company's (USAC) E-rate Productivity Center (EPC). The FCC found that it was in the public interest to waive its appeal deadline rules in this case and granted the Pribilof School District's request to allow submission of its waiver request more than 60 days after USAC's decision regarding the school district's FY2016 FCC Form 471 application.

In its *Pribilof School District Order*, the FCC directed the Wireline Competition Bureau to initiate a process by which other applicants could demonstrate that they are similarly situated to the Pribilof School District and, thus, that a waiver is in the public interest to allow for the processing of their respective late-filed FY 2016 E-Rate applications. USAC records indicate that your FY 2016 FCC Form 471 application was filed late but within 14 days of the close of the filing window. Therefore, your situation may be similar to that of the Pribilof School District and, as a result, you are receiving this notice. If you believe you are similarly situated, you must file a waiver request within **60 days** of the date of this letter. Your waiver request must be filed with the FCC through the FCC's Electronic Comment Filing System (ECFS), in CC Docket No. 02-6. The waiver request should reference the *Pribilof School District Order* and describe with specificity why your factual situation is like that of the Pribilof School District and how a waiver would be in the public interest. A copy of the *Pribilof School District Order* can be found here: <https://docs.fcc.gov/public/attachments/FCC-18-118A1.pdf>.

For further information, please contact our Client Service Bureau at (888) 203-8100.

Sincerely,

Schools and Libraries Division
Universal Service Administrative Company

Contact Person	BEN	BEN Name	471 #
Shaneka N Bratton	122658	Clifton Public Library System	161061588

Need Help? Contact Us!

Call the Client Service Bureau at (888) 203-8100.